

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

DANIEL B. BRAGG,

Petitioner,

: Case No. 2:18-cv-762

- vs -

District Judge Algenon L. Marbley
Magistrate Judge Michael R. Merz

CHARLES BRADLEY, Warden,
Pickaway Correctional Institution

:

Respondent.

REPORT AND RECOMMENDATIONS

This habeas corpus case is before the Court on Petitioner's Motion for Relief from Judgment under Fed.R.Civ.P. 60(b)(2)(ECF No. 12).

The Motion correctly identifies the relevant judgment which is this Court's Judgment dismissing the case on June 3, 2019 (ECF No. 8). Petitioner also avers that he has newly-discovered evidence which could not have been discovered within the time to file a motion for new trial under Fed.R.Civ.P. 59(b). However, Bragg does not tell the Court what that evidence is or why it could not have been discovered within the 59(b) limit. Moreover, neither a trial nor any evidence-taking proceeding was held in this Court prior to judgment.

Because Bragg has not met the requirements of Fed.R.Civ.P. 60(b)(2), his Motion should be denied. Because there is a one-year time limit on motions for relief from judgment under Rule 60(b)(2) and Bragg filed on the anniversary of judgment, any renewed motion under 60(b)(2) would be untimely. Because reasonable jurists would not disagree with this conclusion, it is also recommended that Petitioner be denied a certificate of appealability and that the Court certify to

the Sixth Circuit that any appeal would be objectively frivolous and should not be permitted to proceed *in forma pauperis*.

June 5, 2020.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Because this document is being served by mail, three days are added under Fed.R.Civ.P. 6. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal.